

Title 4 – Criminal Code
Chapter 7 – Offenses Involving Children

Sec.

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Legislative History

Enacted:

Swinomish Criminal Code, Ord. 184 (9/30/03), BIA (10/7/03).

Amended:

Swinomish Criminal Code, Ord. 245 (3/7/06), BIA (04/07/06)

Repealed or superseded:

Swinomish Criminal Code, Ord. 75(4/2/91), Enacting Res. 91-4-37, BIA (6/13/91) (repealing and superseding Ord. 39 and Article XIII of Ord. 32).

Minor Purchase and Possession of Alcohol, Ord. 66 (11/89), Enacting Res. 89-11-96 (amending Ord. 39).

Prohibiting child molestation, Ord. 63(7/12/89), Enacting Res. 89-7-66 (amending Ord. 39).

Establishing Criminal Offenses, Ord. 39 (6/7/77) (superseding conflicting provisions of Ord. 32).

Swinomish Law and Order Code, Ord. 32 (3/4/75), BIA (5/30/75).

Setting Curfew for children under 16, Ord. 17 (undated).

Swinomish Law and Order Code, Ord. 7 (6/1/38), BIA (3/24/38).

Adoption of Swinomish Law and Order Regulations, Ord. 1 (undated).

[Ed. Note. Ordinance 1 is undated and adopts the Law and Order Regulations approved by the Secretary of the Interior November 27, 1935 as part of the fundamental law governing the Swinomish Reservation. The referenced “regulations” are not in tribal records.]

4-07.010 Alcohol Consumption or Possession by a Minor.

Any person under the age of twenty-one (21) who consumes or has in his or her possession any alcoholic beverage, or who appears to have consumed alcohol as evidenced by the person’s speech, appearance, odor, behavior, or motor abilities, so that it is reasonable to

infer recent consumption of alcohol, commits a **Class C offense**.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

4-07.020 Contributing to the Commission of an Offense by a Minor.

- (A) Any adult who intentionally assists in or encourages the commission of an offense by a minor, or who recruits, solicits, conspires with, or enlists the participation of, a minor with regard to obtaining the minor's participation in an offense, commits a separate offense in addition to the offense(s) committed by the adult's accomplice.
- (B) The adult commits a **Class A "contributing" offense** if the child's offense is a Class A or Class B offense.
- (C) The adult commits a **Class B "contributing" offense** if the child's offense is a **Class C offense**.
- (D) The adult commits a **Class C "contributing" offense** if the child's conduct is a civil infraction.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

4-07.030 Criminal Neglect.

- (A) Any person who refuses or neglects to furnish food, shelter, supervision, or care to a child for whose care he or she is responsible, or who otherwise neglects a child, as determined in the Title 8 Juvenile Code commits the crime of criminal neglect.
- (B) Criminal neglect is:
 - (1) a **Class A offense** if the neglect is life-threatening;
 - (2) a **Class B offense** if the neglect risks or causes serious injury or illness; or
 - (3) a **Class C offense** whenever none of the circumstances making it a class A or B offense as defined above are present.
- (C) **"Care"** includes sending a child to school when school attendance is legally required.
- (D) The definition of **"neglect"** shall be interpreted broadly to protect the best interest of the child.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

4-07.040 Criminal Abuse of Children and Abuse of Dependent or Developmentally Disabled Adults.

- (A) Any person who inflicts abuse as defined in Title 8 Juvenile Code or Title 7 Dometic Relations upon a child for whom he or she is responsible, or upon a dependent, or developmentally disabled adult for whom he or she is responsible, under circumstances not constituting an assault, commits a **Class C offense**.
- (B) **“Abuse”** for purposes of this section includes non-accidental bodily injury, cruel mental distress, and sexual abuse and exploitation.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

4-07.050 Curfew for Minors.

- (A) It is a **Class C offense** for any child under the age of eighteen (18) to be in any public place on any weekday (Sunday through Thursday) evening after the hour of 10:00 p.m. and before the hour of 6:00 a.m. and on any weekend (Friday or Saturday) evening after the hour of 12:00 a.m. and before the hour of 6:00 a.m., unless the child is under the direct supervision of a parent, guardian, or other responsible person who is at least twenty-one (21) years of age.
- (B) For a child who violates curfew, a law enforcement officer may take the child into custody and place the child in juvenile detention or emergency shelter care if they are unable to contact the parents, guardians or other adult person responsible for the child, or if the parents, guardians or other adult responsible for the child is unable or unwilling to provide the necessary care and supervision for the child.
- (C) Nothing in this Section shall prevent the prosecution of any child taken into custody under the provisions of these sections for any other crime the child may have committed.
- (D) A child who violates curfew may also be made a delinquent ward of the tribal juvenile court.
- (E) The parent, guardian, or other person legally responsible for a child who has violated curfew at a time when the parent, guardian or legally responsible person knew or in the exercise of his or her parental responsibilities should have known that the child was committing a curfew offense and did not take appropriate steps to prevent the offense commits a **Class C offense**.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

4-07.060 Special Considerations for Offenses Involving Children.

If the defendant is a minor, the Swinomish Juvenile Title shall be referred to for other applicable penalties and procedures. Dependency proceedings and other proceedings for temporary or permanent removal and custody of the child may be concurrent with any proceedings involving offenses under this Chapter.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

4-07. 070 Leaving a Child in the Care of a Sex Offender.

(A) A person is guilty of the crime of leaving a child in the care of a sex offender if the person is

- (1) the parent of a child;
- (2) entrusted with the physical custody of a child; or
- (3) employed to provide to the child the basic necessities of life,

and leaves the child in the care or custody of another person who is not a parent, sibling, grandparent, guardian, or lawful custodian of the child, with knowledge that the other person is registered or required to register as a sex offender under the laws of the Tribe or under a law or ordinance in another jurisdiction with similar requirements.

(B) It is an affirmative defense to the charge of leaving a child in the care of a sex offender under this Section, that a court has entered an order allowing the offender to have unsupervised contact with children, or that the offender is allowed to have unsupervised contact with the child in question under a family reunification plan, which has been approved by:

(1) Swinomish Family Social Services, a court, a department of corrections, or a department of social and health services in accordance with that department's policies created under; or

(2) that the defendant was at the time of the offense classified as a Level I sex offender in accordance with Swinomish law or the laws of another jurisdiction. The defendant must prove the affirmative defense by a preponderance of the evidence.

(C) Leaving a child in the care of a sex offender is a **Class B Offense**.

[History] Ord. 245 (04/07/06).